Supreme Court, U.S.
FILED

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No. 02-

IN THE

Supreme Court of the United States

DIETER CHARLES VOGT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a first offender's 65-year upward departure sentence for child pornography offenses, predicated on the perceived risk of recidivism by pedophiles *generally*, violate the Fifth and Eighth Amendment rights to due process of law and protection against cruel and unusual punishment, by foreclosing any opportunity for treatment for the mental disorder of pedophilia, and by foreclosing an opportunity to be heard on the risk of recidivism by a *particular* offender?

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OPINIONS BELOW

The Eleventh Circuit Court of Appeals' per curiam affirmance below is unreported. It is reproduced in the Appendix at App. A, 1a-10a. Rehearing was denied in an unpublished order. App. B, 11a.

STATEMENT OF JURISDICTION

Judgment was entered by the Eleventh Circuit Court of Appeals on September 6, 2002. App. A, 1a. Rehearing was denied on October 22, 2002. App. B. On January 13, 2003, Circuit Justice Kennedy granted an extension of time for filing the petition for writ of certiorari, until February 5, 2003. Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. V

> No person shall be . . . deprived of life, liberty, or property, without due process of law. . . .

U.S. Const., Amend. VIII

> Excessive bail shall not be required, nor excessive fines imposed, ***nor cruel and unusual punishments inflicted***. (emphasis supplied).

STATEMENT OF THE CASE

Dieter Vogt is afflicted with a paraphilia — "the persistent desire to have sexual contact with what is sexually an inappropriate object because it is the wrong age or species or is an inanimate object." DE# 193-230 (Testimony of Dr. Park Dietz, a forensic psychiatrist and government witness at Vogt's sentencing). Vogt's interest was in 13 year-old boys. His psychiatric disorder is pedophilia. Vogt was convicted of twelve counts relating to child pornography: possession of computer CD ROMs with videos depicting child pornography in violation of 18 U.S.C. § 2252(a)(4)(B) (Count I); five counts of using a minor to produce visual depictions of a minor "engaged in sexually explicit conduct," in violation of 18 U.S.C. § 2251(a) (Counts II-VI); one count of transporting child pornography in interstate and foreign commerce, in violation of 18 U.S.C. § 2252(a)(1) (Count VII); five counts of sending child pornography overseas by computer e-mails, in violation of 18 U.S.C. § 2252(a)(1) (Counts VIII-XII). Vogt was found not guilty by reason of insanity on four counts of traveling in interstate commerce for the purpose of engaging in a sexual act with a minor in violation of 18 U.S.C. § 2423(b).

The Pre-Sentence Investigation Report, prepared to guide the trial court in sentencing Vogt, computed a sentencing guideline offense level (40) and criminal history (category I) that called for an imprisonment range of 292 to 365 months (24.3 years to 30.4 years). The Staff Psychologist and Psychiatrist at the Federal Medical Center at Butner, North Carolina, where Vogt underwent a month of psychiatric evaluation, had concluded that "we do not find any reason to sentence Mr. Vogt outside the guidelines." DE # 167-16. A treatment program at Butner is available to prisoners

with no more than 36 months left on their sentence (DE #194-349-350). The trial court, using various guideline mechanisms, raised the offense level to 42 and the criminal history category to IV, resulting in a 360-month-to-life imprisonment range. The trial court rejected the government's sentencing request for a statutory maximum 195-year sentence, commenting "they are just trying to pile it on so to speak." DE # 193-162. Then, imposing consecutive sentences, the court sentenced Vogt to 780 months — 65 years. Vogt was 31 years old.

Vogt's trial counsel complained of the irrationality and lack of proportionality in seeking to impose a *de facto* life sentence on Vogt.

> I think the guidelines in themselves carry just one incredible amount of punishment for what has been alleged in this case. I think Mr. Cresce calculated the guidelines roughly at 24 to 31 years rounding off and, you know, some where along the way there has to be some portionality [sic] to the crime and the punishment and granted punishment is appropriate, but somewhere along the way there is a level of punishment that is not rational punishment for the sake of deterring or punishing somebody for what they have done which is just pure out and out vengeance.

DE # 192-112.

The government's expert witness at sentencing, Dr. Dietz, replied "yes" to the question of whether Vogt "can change if he gets the right treatment." Dr. Frederick Able, an Emory University Professor of Psychiatry, who has

extensive experience in sex offender issues, testified that Vogt's cognitive dissonance regarding boys' consent was a "pivotal issue" which, if clarified, "everything follows from that in terms of his treatment," and that "when I saw him, he was starting to appreciate the severity of his distorted thinking about children being able to give consent and he reflected that rather clearly." DE # 194-362. Dr. Fred Berlin, a Johns Hopkins University School of Medicine Professor and founder of the Johns Hopkins sexual disorder clinic, was optimistic about Vogt's prognosis with treatment: "He is not a recidivist. He does not have other problems like drugs and alcoholism." DE# 195-533-534.

Neither Dr. Able nor Dr. Berlin could guarantee that Vogt would be "cured." Dr. Berlin acknowledged that if that were the only criterion, and that if "zero risk" is the standard, then Vogt would have to be "executed or never let out." DE # 195-534, 551. Zero risk was the trial court's only concern. The trial court posed these questions to Dr. Able:

> THE COURT: Okay. And I am going to assume that you have thought this question [through] in your own mind. But what if we were to follow your sentencing recommendation and the defendant subsequently molested another child, what words would you give to that child, if any?
>
> * * *
>
> THE COURT: What would you say to the child if you said it could have been preventable?

DE# 194-429-430.

Among the reasons that the trial court gave for Vogt's 780-month sentence was that "the defendant's criminal history category (Criminal History Category I) does not adequately reflect the likelihood that the defendant will not commit other crimes." DE# 196-798-799. But the trial court's focus was on the possibility of recidivism generally, asking another expert about studies not collecting data "for repeat offenders who are not apprehended or convicted,"prompting this colloquy:

> A. Your honor, as I am sure you are aware, if recidivism is unknown you can't collect data on it.
>
> THE COURT:
>
> Exactly. That is exactly the point.

DE# 195-454.

REASONS FOR GRANTING THE PETITION

The decision below, by imposing a *de facto* life sentence for offenses committed because of a mental abnormality without any opportunity for a subsequent hearing to determine if the mental abnormality persists, presents an important but unanswered federal question and conflicts with principles of fairness and substantive and procedural due process.

The government, "pursuant to its police power, may of course imprison convicted criminals for the purposes of deterrence and retribution." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). But Dieter Vogt received a 65 year sentence

for another reason — to guarantee that he would not act out his psychiatric disorder of pedophilia. The recommended guideline sentence of 24 to 30 years would have served the criminal law purposes of deterrence and retribution, but the additional decades of imprisonment were based upon the trial court's concerns about future behavior, not past criminal conduct.

Although the trial court rejected the government's demand for a 195 year sentence, the Court's alternative — incarcerating Vogt until he was 95 — used Vogt's mental abnormality to depart from the sentencing guidelines and confine Vogt for the duration of his life.

This Court has approved civil confinement of a person "until his mental abnormality no longer causes him to be a threat to others," but only when procedures for reviews are provided. *Kansas v. Hendricks*, 521 U.S. 346, 364 (1997). In *Jones v. United States*, 463 U.S. 354, 368 (1983), the Court approvingly said "because it is impossible to predict how long it will take for any given individual to recover [from insanity] or indeed whether he will ever recover — Congress has chosen . . . to leave the length of commitment indeterminate, subject to periodic review of the patient's suitability for release." That provided a foundation for the Court's approval of the Kansas Sexually Violent Predator Act:

> [C]ommitment under the Act is only *potentially* indefinite. The maximum amount of time an individual can be incapacitated pursuant to a single judicial proceeding is one year. § 59-29a08. If Kansas seeks to continue the detention beyond that year, a court must once again determine

> beyond a reasonable doubt that the detainee satisfies the same standards as required for the initial confinement. *Ibid.* This requirement again demonstrates that Kansas does not intend an individual committed pursuant to the Act to remain confined any longer than he suffers from a mental abnormality rendering him unable to control his dangerousness.

Kansas v. Hendricks, 521 U.S. at 364 (emphasis in original).

Had Vogt been sentenced only to a term consistent with the recommended guideline range, or had the trial court not so clearly departed because of a concern for future dangerousness ("[If] the defendant subsequently molested another child, what words would you give to that child, if any;" "what would you say to the child if you said it could have been preventable?"), Vogt would be hard pressed to have a credible claim. But the excessiveness of the sentence imposed here, and the court's inescapable focus upon recidivism generally, brings this case within the ambit of substantive and procedural due process and the Eighth Amendment.

The trial court incarcerated a treatably ill person for life without any opportunity to be subsequently heard, subsequently treated or subsequently released after his recommended guideline sentence had been served. Vogt's sentence is a lifetime civil commitment disguised as a criminal sentence.

The civil commitment statute upheld in *Kansas v. Hendricks*, and addressed again in *Kansas v. Crane*, 122 S. Ct. 867 (2002), provides a paradigm for addressing the

recidivist concern that drove the court below to its relentless sentence. There is no doubt that pedophilia is treatable. *See Kansas v. Hendricks*, 521 U.S. at 378 (Breyer, J., dissenting).

> Two groups of mental health experts agree. Brief for the Association for the Treatment of Sexual Abusers as Amicus Curiae 11-12 (stating that "sex offenders can be treated" and that "increasing evidence" shows that "state-of-the-art treatment programs . . . significantly reduce recidivism"); Brief for Menninger Foundation *et al* as *Amici Curiae*, 28. Indeed, no one argues to the contrary.

The analogy to civil commitment is apt, given the trial court's focus on reoffense. The "practical effect" of civil commitments "may be to impose confinement for life." *Kansas v. Hendricks*, 117 S. Ct. at 2087 (Kennedy, J., concurring). But such commitments provide procedural due process protections; protections not available to Vogt despite his treatability.

The sentence imposed also conflicts with substantive due process.

> What we have said of due process in the procedural sense is just as true here:
> "The phrase [due process of law] formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given

> case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial." *Betts v. Brady*, 316 U.S. 455, 462 (1942).

County of Sacramento v. Lewis, 523 U.S. 833, 850 (1998). Imprisoning Vogt for life was, in the words of one expert at trial "like getting mad at a blind man for not seeing." DE #195-549. That is conscience shocking.

Finally, the disproportionality of the sentence poses an Eighth Amendment conflict. "The Eighth Amendment . . . forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 1001 (Kennedy, J. concurring) quoting *Solem v. Helm*, 463 U.S. 277, 288 (1983). The sentencing guidelines called for a 24 to 30 year sentence for Vogt. Adding approximately 40 years to that range, on these facts, compels an Eighth Amendment inquiry by this Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED SEPTEMBER 6, 2002

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 01-14944
Non-Argument Calendar

D.C. Docket No. 00-10029-CR-KMM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DIETER CHARLES VOGT,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

(September 6, 2002)

Before CARNES, HULL and FAY, Circuit Judges.

PER CURIAM:

Dieter Charles Vogt appeals his convictions and sentences for possession of child pornography, 18 U.S.C. § 2252(a)(4)(B), using a minor to produce child pornography,

18 U.S.C. § 2251(a), transportation of child pornography, 18 U.S.C. § 2252(a)(1), and transportation of child pornography by computer, 18 U.S.C. § 2252(a)(1). Vogt contends the district court should have suppressed evidence found in the execution of search warrants. He argues the court misled the jury in its unanimity instruction. Finally, Vogt claims his sentences, totaling 780 months in prison, violate due process and the Eighth Amendment.

A federal grand jury indicted Vogt on one count of possession of child pornography, 18 U.S.C. § 2252(a)(4)(B), five counts of using a minor to produce child pornography, 18 U.S.C. § 2251(a), one count of transportation of child pornography, 18 U.S.C. § 2252(a)(1), five counts of transportation of child pornography by computer, 18 U.S.C. § 2252(a)(1), and four counts of travel for the purpose of engaging in sexual activity with a minor, 18 U.S.C. § 2423(b). This was based, in part, on evidence obtained by police while executing two search warrants (the "Car Warrant" and the "Bag Warrant").

Vogt moved to suppress the evidence the police found in the execution of the warrants, arguing lack of specificity, lack of probable cause, and lack of good faith reliance on the warrants. After an evidentiary hearing before a magistrate judge, the district court upheld the validity of the warrants.

At the end of the trial, in instructing the jury on one count of the indictment, the court informed the jurors that they must unanimously agree beyond a reasonable doubt that at least one item and the same item constituted child pornography. Vogt did not raise any unanimity objection to

the jury instructions. The jury found Vogt guilty on all counts except the molestation counts on which they found Vogt not guilty by reason of insanity.

At sentencing, the government moved for several upward departures from the 292 to 365 months' incarceration set forth in the sentencing guideline calculations. One of the bases the government urged for an upward departure was Vogt's likelihood of recidivism, pursuant to U.S.S.G. § 4A1.3. The district court heard a great deal of evidence concerning whether Vogt might reoffend and then granted the upward departures. The district court sentenced Vogt to several sentences totaling 780 months incarceration.

MOTION TO SUPPRESS

Vogt makes three arguments against the validity of the searches. First, he contends the Car Warrant was lacking in specificity. Second, Vogt argues the Car Warrant was not based on probable cause. He discusses decisions of other Circuits invalidating computer searches for evidence of other crimes that turned up evidence of child pornography. Vogt notes the Car Warrant permitted only searches for, not into, computers. Third, Vogt argues the good faith exception to the exclusionary rule is not applicable to the execution of either warrant.

A district court's ruling on a motion to suppress presents mixed questions of law and fact. *United States v. Ramirez-Chilel*, 289 F.3d 744, 748-49 (11th Cir. 2002). We accept the findings of fact as true unless they are clearly erroneous, but review the application of the law to those facts *de novo*.

Id., 289 F.3d at 749. The facts are to be construed in the light most favorable to the party who prevailed below. *United States v. Hall*, 47 F.3d 1091, 1094 (11th Cir.), *cert. denied*, 516 U.S. 816 (1995).

The validity of a warrant is assessed on the basis of the information the police disclosed, or had a duty to disclose, to the issuing judge. *Maryland v. Garrison*, 480 U.S. 79, 85, 107 S.Ct. 1013, 1017, 94 L.Ed.2d 72 (1987). We consider the nature of the case under investigation. *United States v. Weinstein*, 762 F.2d 1522, 1532 n.4 (11th Cir. 1985), *opinion modified on rehearing*, 773 F.2d 673, *cert. denied*, 475 U.S. 1110 (1986). We must strike a balance between the practical necessities of law enforcement and the likelihood of a violation of personal rights. *Id.*

Specificity Warrants must particularly describe the place to be searched and the things to be seized. U.S. Const., amend. IV. A warrant's descriptions need not meet technical requirements. The fourth amendment requires only that the warrant describe the premises and the items in such a way that the searching officer may with reasonable effort ascertain and identify the place to be searched and the items to be seized. *United States v. Santarelli*, 778 F.2d 609, 614 (11th Cir. 1985); *Weinstein*, 762 F.2d at 1532. The warrant simply must be as specific as the circumstances and the nature of the activity under investigation permit. *Santarelli*, 778 F.2d at 614.

Probable Cause Warrants may issue only on probable cause. U.S. Const., amend. IV. Whether probable cause exists is a common sense, practical question. *Illinois v. Gates*, 462

U.S. 213, 230, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983). The issue is whether, given all the circumstances set forth in the supporting affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.* 462 U.S. at 238, 103 S.Ct. at 2332. After-the-fact scrutiny of the sufficiency of an affidavit should not take the form of de novo review. *Id.* 462 U.S. at 236, 103 S.Ct. at 2331. Instead, we pay great deference to a determination of probable cause, reviewing only to ensure that the court had a substantial basis for concluding that probable cause existed. Id., 462 U.S. at 236, 238-39, 103 S.Ct. at 2331, 2332.

Only items specified in the warrant may be seized. *United States v. Jenkins*, 901 F.2d 1075, 1081 (11th Cir.), *cert. denied*, 498 U.S. 901 (1990). An exception to this rule occurs when, in the course of performing a lawful search for an item listed on the warrant, the officer comes across other incriminating items. *Id.* To seize such other items as come into plain view, the officer must (1) have independent justification for being in a position to see the items; (2) discover the items inadvertently; and (3) immediately observe that the items are evidence. *Id.*, 901 F.2d at 1081-82. The officer must have probable cause to believe the items are evidence of a crime. *Id.*, 901 F.2d at 1082.

Good Faith Under the good faith exception to the exclusionary rule, evidence seized by a police officer who conducted a search or seizure in violation of the Fourth Amendment will not be suppressed if the officer's conduct was objectively reasonable. *United States v. Leon*, 468 U.S. 897, 919-20, 104 S.Ct. 3405, 3419, 82 L.Ed.2d 677 (1984).

Appendix A

Upon review of the record and upon consideration of the briefs of the parties, we discern no reversible error.

At the suppression hearing, Detective Christine Scott testified she talked with N.R., A.U.'s mother, and interviewed A.U. and M.D. Scott learned that Vogt was going to the camp for a weekend and then returning to South Africa. Scott learned what type of rental car Vogt had reserved, but was unable to learn the color or license tag number. Scott knew Vogt was expected to return briefly to the U. residence and requested N.R. to provide her with details concerning Vogt's car. Scott did not tell the judge the specifics of Vogt's vehicle because N.R. provided that information after Scott obtained the warrant. Scott stated A.U. told her Vogt had touched him in his genital area. A.U. told Scott Vogt had taken digital photographs and shown them to A.U. on his computer.

Scott learned from N.R. and A.U. that Vogt had a computer with him at their home and did not appear to leave the computer behind. Scott wanted to search Vogt's computer for evidence of molestation, such as emails, addresses, names and photographs.

When police executed the Car Warrant, they seized many items, including two laptop computers and a detachable hard drive. Scott testified the expert who analyzed this equipment had to break into the computers because they were password protected and had encrypted areas. The expert needed two computers and more than 1500 hours to extract all the information on the computers. The government ended up with close to 10,000 pages of printed documents from the equipment.

Scott admitted she did not have a warrant nor Vogt's consent to take the bag into custody. After obtaining the bag, Scott sought a warrant to search it. Scott stated Detective Jackson had inventoried bag and told her it contained a laptop computer.

Detective Jackson claimed the bag was partially open when he received it. He did not search or inventory the bag, but saw what appeared to be a computer keyboard inside. Jackson first saw the contents of the bag when he watched another detective perform an inventory. Jackson saw a keyboard and other computer equipment. The district court credited this testimony.

Under these circumstances, the Car Warrant was sufficiently specific and was based on probable cause. Vogt makes no argument concerning the district court's finding that the Bag Warrant was valid and thus has abandoned any argument he might have had. *See United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998). Because the warrants were valid, we need not reach the issue of the good faith exception to the exclusionary rule. *See United States v. Miller*, 24 F.3d 1357, 1360 (11th Cir. 1994).

JURY INSTRUCTION

Vogt argues that the portion of the jury instruction that told the jury they had to find that only one image was pornographic, denied him his right to a unanimous verdict on each count. Vogt contends that this confusion was not cured by the district court's unanimity instruction. Vogt admits his failure to raise a unanimity objection below entitles him only to plain error review, but contends the error here was so fundamental it is plain error.

Appendix A

We generally review jury instructions de novo to determine whether they misstate the law or misled the jury. *See United States v. Richardson*, 233 F.3d 1285, 1292 (11th Cir. 2000), *cert. denied*, 532 U.S. 913 (2001). The district court has broad discretion in formulating a jury charge so long as the charge as a whole accurately reflects the law and the facts. *Id.* On appeal, we examine whether the charge, considered as a whole, sufficiently instructed the jury so that the jurors understood the issues and were not misled. *Id.* We will not reverse a conviction unless, after examining the entire charge, we find that the issues of law were presented inaccurately, the charge included crimes not contained in the indictment, or the charge improperly guided the jury in such a substantial way as to violate due process. *Id.*

At trial, Vogt never raised a unanimity issue. This issue, therefore, will be reviewed for plain error. This requires that error be plain, and that it affect substantial rights and implicate the fairness, integrity, or public reputation of judicial proceedings. *United States v. Hansen*, 262 F.3d 1217, 1248 (11th Cir. 2001), *cert. denied*, 122 S.Ct. 2326 (2002). When the evidence of guilt is overwhelming, any error does not affect substantial rights. *United States v. Cano*, 289 F.3d 1354, 1364 (11th Cir. 2002).

Upon review of the record and upon consideration of the briefs of the parties, we discern no reversible error. The instruction complained of is clear and concise and in accord with the requirements of the law.

There was no plain error in the jury instructions.

Appendix A

UPWARD DEPARTURE

Vogt argues that his 780 months total sentence is unconstitutional because his crimes were the product of a treatable mental disorder. He contends his sentences offend procedural due process, substantive due process, and the Eighth Amendment.

Vogt makes no argument concerning whether the district court correctly applied the guidelines addressing upward departures or whether the government carried its burden of proof and, thus, has abandoned any guideline-related issue he might have had. *Cunningham*, 161 F.3d at 1344.

Objections to the constitutionality of a sentence generally are reviewed de novo. *United States v. Miles*, 290 F.3d 1341, 1348 (11th Cir. 2002). Other than once making reference to proportionality and injustice, Vogt did not do much to preserve this issue. Issues raised for the first time on appeal are reviewed for plain error. *Hansen*, 262 F.3d at 1248. This requires that error be plain, and that it affect substantial rights and implicate the fairness, integrity, or reputation of judicial proceedings. *Id.* Regardless of the standard of review, the outcome is the same.

In non-capital cases, the Eighth Amendment encompasses, at most, a narrow proportionality principle. *United States v. Reynolds*, 215 F.3d 1210, 1214 (11th Cir.), *cert. denied*, 531 U.S. 1000 (2000). We must make a threshold determination that the sentence imposed is grossly disproportionate to the offense committed. *Id.* Only minimal procedural due process protections are required at sentencing. *United States v. Erves*, 880 F.2d 376, 379 (11th Cir.), *cert. denied*, 493 U.S. 968 (1989). Punishment must not be based on unreliable information or result from retaliation for exercising a constitutional right. *Id.*

Vogt argues only that his sentence shocks the conscience, citing a civil case.

Upon review of the record and upon consideration of the briefs of the parties, we discern no reversible error. The sentences imposed are all within the statutory maximums, do not seem grossly disproportionate and are in accord with others imposed for such crimes. The record fully supports the rulings of the sentencing judge. Vogt's sentence does not violate the Eighth Amendment nor either aspect of the due process clause.

CONCLUSION

The district court did not err in refusing to suppress the contested evidence. The jury instruction did not constitute plain error. Vogt's sentences are not unconstitutional. Accordingly, we affirm Vogt's convictions and sentences.

AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED OCTOBER 22, 2002

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 01-14944-EE

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DIETER CHARLES VOGT,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of Florida

Before CARNES, HULL and FAY, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant, Dieter Charles Vogt is DENIED.

ENTERED FOR THE COURT:

s/ Peter Fay
UNITED STATES CIRCUIT JUDGE